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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/733,138

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Rajan Mathew Lukose

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04/05/2007

CASCADIA INTELLECTUAL PROPERTY

500 UNION STREET

SUITE1005

SEATTLE, WA 98101

EXAMINER

FELTEN, DANIEL S

ART UNIT

PAPER NUMBER

3693

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

09/733,138

**Applicant(s)**

LUKOSE, RAJAN MATHEW

**Examiner**

Daniel S. Felten

**Art Unit**

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-17, 20-27 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-17, 20-27 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Receipt of the response to filed January 19, 2007 is acknowledged.
2. This office action is a Supplemental Office Action to address claim amendments and remarks in applicant's responses Of March 29, 2006 and July 19, 2006.
3. Claims 8, 9, 18, 19, 28 and 29 are cancelled. Claims 1-7, 1-17, 20-27 and 30 are amended. Claims 31-33 are new. Claims 1-7, 10-17, 20-27 and 30-33 remain pending in the application.

### ***Response to Arguments***

Applicant's arguments filed March 29, 2006 and July 19, 2006 have been fully considered but they are not persuasive. References in determining obviousness are not read in isolation but for what they fairly teach in combination with the prior art as a whole, and thus patent assignee's reference-by-reference attack on prior art as a whole to demonstrate non-obviousness is not persuasive [In re Merck, 231 USPQ 375 (CAFC 1986)]. It is also submitted that references are evaluated by what they suggest to one versed in the art, rather than their specific disclosure [see In re Bozek, 163 USPQ 545 (CCPA 1969)]. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Both Walker and Johnson are related in the field of e-commerce. In particular both inventions provide systems of electronic transactions involving

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electronic purchase and payment of goods and services. It is asserted that both Walker and Johnson provide conditions or criteria that must be satisfied before the transaction between buyer and seller can take place. Whereas Walker's system constructs transactions (or at least provides embodiments) that seem to be based upon *conditions* that allow the transaction to take place, Walker also suggests that certain conditions are more complex in that they themselves are contingencies by which existing contract are accepted based upon a point system in and the contracts still exist between buyer and seller *after* contingencies/conditions are removed from consideration (see Walker, column 16, lines 11-45). Johnson does the same thing, however, Johnson goes further in that he further describes complex transactions and restrictions between buyers and sellers based upon other factors (see Johnson, column 16, lines 59+). It was previously discussed that Walker's invention would have recognized the competitive nature of effectuating bilateral buyer-driven commerce and would have availed themselves of the latest technology, described in Johnson, to address the complexities of multi buyer/seller transactions based upon various contingencies on the part of the buyer and/or seller as well as various time restrictions on the acceptance and performance of the transaction. It is also submitted that the contract of Johnson does not teach away from Walker inasmuch as the Johnson contract may be time restricted (see Johnson column 16, lines 59+). It is also submitted that the central computer in Walker is an art recognized equivalent to the third party escrow system of Johnson inasmuch as both provide indirect system for buyer/seller payment and negotiation based upon conditions/contingencies both well known in the e-commerce art. Thus for the following reasons the rejections using Walker and Johnson are maintained.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 6, 7, 10-12, 16, 17, 20-22, 26, 27 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 5,794,207) in view of Johnson (US 6,529,885)

**Re claims 1, 2, 6, 7, 10:**

receiving an offer *from a buyer* for information (see Walker, col. 16, lines 3-45, and col. 22, lines 1-37). The aforementioned features above are provided within the Walker. However, Walker fails to disclose that the CPO transactions are based upon a contingency or that *the offer includes* at least one contingency *that* provides an uncertainty of an event related to the information occurring;

Johnson discloses carrying out electronic transactions, including electronic drafts payment that are based upon a number of contingencies (see Johnson, Abstract, col. 16, line 59 to col. 17, line 35., and col. 18, line 20, to col. 19, line 8). It would have been obvious for an artisan of ordinary skill in the art at the time of the invention to substantially modify and/or substitute the CPO in Walker with the transaction features of iDRAFT™ and iDRAFT-CTM found in Johnson, because an artisan at the time the iTX, of Walker's invention would have

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recognized the competitive nature of effectuating bilateral buyer-driven commerce and would have availed themselves of the latest technology infrastructure to address the complexities of multi buyer/seller transactions that, conventionally, are based upon various contingencies on the part of the buyer and/or seller as well as various time restrictions on the acceptance and performance of the transaction.

Thus such a modification would have been an obvious expedient well within the ordinary skill the art.

Walker fails to disclose selling information or that the information includes a condition about the at least one contingency, that *satisfaction of the at least one condition will resolve the uncertainty of the event* occurring to satisfy at least one of the contingences *and will trigger at least part of the payment of the buyer*. However, since in this case the information itself is considered a “good” and the act of providing information considered a “service”, an artisan at the time of Walker would have been motivated to buy and sell information via the receiving a first payment for the good or service if the at least one condition for the CPO is satisfied after the good or service has been provided to the buyer (see Walker, col. 16, lines 3-45\*, and col. 22, lines 1-37).

**Re claim 11 :**

a receiving system that receives an *offer from a buyer* for the information *wherein the offer includes* including at least one contingency *that* provides an uncertainty of an event related to the information *occurring*;

a source for the good or service that provides the information in response to the offer, the information *wherein the offer* includes at least one condition about the at least one contingency,

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*wherein satisfaction of at least one* at least one condition *will resolve the uncertainty of the event occurring to satisfy* at least one of the contingencies *and will trigger at least part of the payment from the buyer*, and wherein *acceptance of* the at least one condition *forms a contract and the at least one condition* is unsatisfied when the information is provided;

and a contingent payment processing system that receives a first payment for the information if the at least one condition for the contingency is satisfied after the information has been provided to the buyer *and the buyer has subsequently determined that the at least one condition has resolved the uncertainty of the vent occurring to satisfy the at least one contingency* (see explanation given for claim 1).

**Re claim 12:**

further comprising a base payment processing system that receives a base payment *as the at least part of the payment* when the information has been provided (see explanation given for claim 2).

**Re claim 16:**

further comprising a condition setting system which sets the condition *to resolve the uncertainty of satisfy* the contingency in the received offer (see explanation to given to claim 6).

**Re claim 17:**

a counteroffer system that sends a counteroffer to the buyer based on the offer, the counteroffer provides the condition set *to resolve the uncertainty of satisfy* the contingency to the buyer; and

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purchase decision system that determines if the counteroffer with the condition set is accepted by the buyer, wherein the information is only provided if the condition set is accepted (see explanation to given to claim 7).

**Re claim 20:**

wherein the receiving system receives the offer and the source of the information provides the information electronically (see explanation to given to claim 10).

**Re claim 21:** A computer readable medium having stored instructions for selling contingent information which when executed by a processor, causes the processor to perform:

receiving an offer for the information including at least one contingency from the buyer; providing the information in response to the offer, the information includes at least one condition about the at least one contingency, wherein the at least one condition is unsatisfied when the information is provided; and

receiving a first payment for the information if at least one condition for the contingency is satisfied after the information has been provided to the buyer (see explanation to given to claim 1).

**Re claim 22:**

further comprising receiving a base payment when the information has been provided to the buyer (see explanation to given to claim 2).



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**Re claim 26:**

further comprising setting the condition for the contingency in the received offer (see explanation to given to claim 6).

**Re claim 27:**

sending a counteroffer to the buyer based on the offer, the counteroffer providing the condition set for the contingency to the buyer; and determining if the counteroffer with the condition set for the contingency is accepted by the buyer, wherein the information is only provided if the condition set for the contingency is accepted (see explanation to given to claim 7).

**Re claim 30:**

wherein one or more of the steps are carried out electronically (see explanation to given to claim 10).

**Re claim 30:**

Wherein the information from the seller in response to the offer is proved with out a payment from the buyer (see explanation of claim 1)

**Re claim 32**

Wherein the information from the seller in response to the offer is proved with out a payment from the buyer (see explanation of claim 1)

**Re claim 33:**

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Wherein the information from the seller in response to the offer is proved with out a payment from the buyer (see explanation of claim 1)

6. Claims 3-5, 13-15 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 5,794,207) as modified by Johnson (US 6,529,885) as applied to claim 1 as discussed above, and in further view of Lundgren (US5,608,620). The teachings of Walker as modified by Johnson have been discussed

**Re claim 3:**

Although Walker as modified by Johnson discloses adjusting an amount for the first payment based upon a conditional satisfaction of a contingency (see Johnson, col. 18, lines 20-55), Walker as modified by Johnson fails to disclose adjusting an amount for the first payment based on a probability that the condition for the contingency will occur.

Lundgren discloses adjusting an amount for the first payment based on a probability that the condition for the contingency will occur (see Lundgren, col. 21 , line 58 to col. 23, line 15, and col. 23, lines 45-55). In view of the teachings of Lundgren, it would have been obvious for an artisan of ordinary skill at the time of the invention to employ the teachings of Lundgren to the teachings of Walker as modified by Johnson because an artisan at the time of the invention would seek to compensate sellers to the degree of which buyer satisfaction is obtained. Thus an artisan at the time of the invention of Walker as modified by Johnson would have motivated to employ the teachings of Lundgren for protection against being over charged for goods and services as well as providing a sense of fairness to all parties involve in the transaction. Thus such a feature would have been an obvious expedient to one of ordinary skill in the art.

**Re claim 4:**

Walker as modified by Johnson discloses selecting the condition for the contingency, and determining the amount for the first payment based on a function which uses the condition for the contingency occurring, fails to disclose selecting an announced for the condition for the contingency, and determining the amount for the first payment based on a function which uses the announced probability for the condition for the contingency occurring. This is disclosed by Lundgren (see Lindgren, col. 21, line 58 to col. 23, line 15., and col. 23, lines 45-55).

It would have been obvious for an artisan of ordinary skill at the time of the invention to employ the teachings of Lundgren to the teachings of Walker as modified by Johnson because an artisan at the time of the invention would seek to pay sellers based upon the amount or degree to the which the conditions and contingencies within the transaction are satisfied. Thus an artisan at the time of the invention of Walker as modified by Johnson would have motivated to employ the teachings of Lundgren so as not to over pay for goods and services as well as providing the buyer a sense of protection involved in process of completing the transaction. Thus such a feature would have been an obvious expedient to one of ordinary skill in the art.

**Re claim 5.**

Walker as modified by Johnson discloses wherein the amount of the first payment is maximized when the condition occurs but fails to disclose the amount of the first payment is maximized when the announced probability for the condition occurring is substantially the same

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as a true probability for the condition occurring. This is disclosed by Lundgren (see Lundgren, col. 24, lines 3-54). It would have been obvious for an artisan of ordinary skill at the time of the invention to employ the teachings of Lundgren to the teachings of Walker as modified by Johnson because an artisan at the time of the invention would seek to pay sellers based upon the amount or degree to which the conditions and contingencies within the transaction are satisfied. Thus an artisan at the time of the invention of Walker as modified by Johnson would have motivated to employ the teachings of Lundgren for protection against over paying for goods and services as well as providing the seller a sense of accomplishment involved in process of completing the transaction. Thus such a feature would have been an obvious expedient to one of ordinary skill in the art.

**Re claim 13:**

wherein the contingent payment processing system adjusts an amount for the first payment based on a probability that the condition for contingency occurs (see explanation given for claim 3).

**Re claim 14:**

the first payment processing system selects an announced probability for the condition for the contingency and a function for determining the amount for the first payment based on the announced probability for the condition for the contingency occurring (see explanation to given to claim 4).

**Re claim 15:**

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wherein the first payment processing system maximizes the amount of the contingent payment when the announced probability for the condition occurring is substantially the same as a true probability for the condition occurring (see explanation to given to claim 5)

**Re claim 23:**

further comprising adjusting an amount for the first payment based on an announced probability that the condition for the contingency will occur (see explanation to given to claim 3).

**Re claim 24:**

selecting the announced probability for the condition for the contingency; and determining the amount for the first payment based on a function which uses the announced probability for the condition for the contingency occurring (see explanation to given to claim 4).

**Re claim 25:**

wherein the amount of the first payment is maximized when the announced probability for the condition occurring is substantially the same as a true probability for the condition occurring (see explanation to given to claim 5).

***Conclusion***

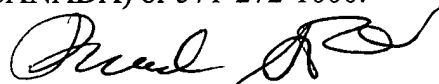
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742.

The examiner can normally be reached on Flex.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Daniel S Felten  
Examiner  
Art Unit 3693

DSF  
3/30/2007